Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

TINA REID HOLMAN WARFIELD,

Petitioner,

versus

EDWARD S. WARFIELD III,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

IS THE UNIFORM CHILD CUSTODY JURISDICTION ACT INCONSISTENT WITH FUNDAMENTAL NOTIONS OF DUE PROCESS WHEN IT IS UTILIZED BY A PARENT TO OBTAIN A BINDING CHILD CUSTODY DECREE WHEN THE OTHER PARENT AND THE MINOR CHILD ARE DOMICILED IN AND RESIDENTS OF A FOREIGN COUNTRY, IN THE ABSENCE OF ANY EXISTING JUDICIAL ACTION OR AGREEMENT THAT THEY ARE SUBJECT TO THE JURISDICTION OF THE COURT?

LIST OF PARTIES

The parties to the proceedings in the court whose judgment is sought to be reviewed are:

TINA REID HOLMAN WARFIELD

EDWARD S. WARFIELD III

No corporate entities are parties to this proceeding.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Tina Reid Holman Warfield requests that a writ of certiorari issue to review the judgment of the Supreme Court of Florida, which denied review of a decision of the Florida Fourth District Court of Appeal.

OPINIONS BELOW

The judgment of the Supreme Court of Florida denying discretionary review is reported as *Warfield v. Warfield*, 669 So. 2d 252 (Fla. 1996). The opinion of the Florida Fourth District Court of Appeal on direct appeal is reported as *Warfield v. Warfield*, 661 So. 2d 924 (Fla. 4th DCA 1995).

JURISDICTION

On February 12, 1996, the Supreme Court of Florida denied discretionary review of a decision of the Florida Fourth District Court of Appeal. Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257 and Supreme Court Rule 13.1.

PROVISIONS OF LAW

U.S. Constitution, Fifth Amendment.

No persons shall . . . be deprived of life, liberty, or property without due process of law . . .

U.S. Constitution Fourteenth Amendment.

[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . .

Uniform Child Custody Jurisdiction Act.

Reproduced in the Appendix.

Parental Kidnapping Protection Act.

Reproduced in the Appendix.

STATEMENT OF THE CASE

This case arises from an application of the Uniform Child Custody Jurisdiction Act (UCCJA), which is codified at §§ 61.1302-61.1348, Florida Statutes (1995). The UCCJA, enacted to avoid jurisdictional disputes in matters involving child custody and to promote cooperation with courts of the several states, § 61.1304(1) & (2), Fla. Stat. (1995), has been adopted in all states, the Virgin Islands, and the District of Columbia.[1] The UCCJA is designed to

> [a]ssure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his or her family have the closest connection and where significant evidence concerning his or her care, protection,

[1] For a list of the jurisdictions in which the Uniform Child Custody Jurisdiction Act has been adopted, see Uniform Laws Annotated, Master Edition, Volume 9, Pt. I.

> training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the family have a closer connection with another state.

§ 61.1304(3), Fla. Stat. (1995).

The jurisdiction of state courts under the UCCJA is subject to the following test[2]:

> **61.1308 Jurisdiction.** –
>
> (1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:
>
> (a) This state:
>
> 1. Is the home state of the child at the time of commencement of the proceeding, or
>
> 2. Had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his or her removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state;
>
> (b) It is in the best interest of the child that a court of this state assume jurisdiction because:
>
> 1. The child and his or her parents, or the child and at least one contestant, have a significant connection with this state, and

---

[2] This jurisdictional test is not unique to Florida courts, but is an integral component of the Uniform Act.

2. There is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(c) The child is physically present in this state and:

1. The child has been abandoned, or

2. It is necessary in an emergency to protect the child because he or she has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or

(d) 1. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (a), paragraph (b), or paragraph (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and

2. It is in the best interest of the child that a court of this state assume jurisdiction.

(2) Except under paragraph (c) or paragraph (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody.

This case arises from a Florida proceeding for dissolution of marriage and to enforce a property settlement agreement concerning child custody. Only one parent, respondent-husband, was a participant in the Florida

court proceedings. The other parent and the child, both of whom had been residents of and domiciled in the sovereign nation of Mexico since the parents' separation, were never a part of the Florida case.

The husband (respondent in this proceeding) initiated the dissolution of marriage and child custody proceeding in a Florida state court. Both the wife (petitioner) and the minor child were not in Florida, had never lived in Florida, and had never been part of any legal proceedings in Florida. The wife was the custodial parent, and had been living in Mexico with the child since the separation. The residence and domicile of the wife and child in Cozumel, Mexico for the five years since the separation was with the full consent and agreement of the father, and was an express part of the parents' property settlement agreement. That agreement, which included child custody provisions, was executed by the husband and wife in Virginia in September 1990, when the child (Nicholas Carver Warfield) was not yet one year old. The agreement was not part of any judicial or court proceedings, but was merely a private contract between the parents.

The settlement agreement included child custody provisions that made the wife the custodial parent and set the child's place of residence with the wife in Cozumel, Mexico, until the age of emancipation, with generous visitation by the husband. The agreement had the husband's place of residence in the Washington, D.C. area, and obligated the wife to pay one-half of the cost of transporting the child to Washington for the child's visits with the husband. The agreement itself contained the following additional clause:

> Beginning with the school year 1994 or the date upon which the child may attend kindergarten in the jurisdiction in which Husband resides, the Child will reside with the Husband and will attend school in the jurisdiction in which the Husband resides. During such period that the Child resides with the Husband, the Wife shall be entitled to visit with the Child during summer vacation following each school year.

It is this clause which is at the heart of the ensuing litigation.

In 1994, when the husband was living in Florida, the husband filed for divorce and sought to enforce that provision of the agreement which required the child to attend school in the husband's jurisdiction. As the wife and child were domiciled in Mexico, the husband obtained service on the wife by having a notary serve the wife in Mexico. The wife, who had no attachment to Florida or the United States, did not participate in the Florida divorce proceedings. The Florida court, on a default judgment, entered a final judgment incorporating the terms of the separation agreement, including the provision requiring the child to reside with the husband during the school year.[3] The wife, meanwhile, had commenced her own legal proceedings in Mexico, which had been her domicile and the residence of the child as described in the agreement. The Florida court disregarded the Mexican proceedings, concluding in summary fashion "the Mexico Court does not have jurisdiction over the subject matter nor the parties. That any orders or

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[3] The final judgment is reproduced in the Appendix.

judgments by the Mexico Courts would be void." Appendix 23.

The wife promptly appealed the Florida trial court's jurisdiction, contending the Florida court had no authority to enter a judgment when neither she nor her child had any meaningful association with the State of Florida. The wife argued that Florida law and the UCCJA obligated the Florida courts to decline to exercise jurisdiction because both the child and his custodial parent had a closer connection to their home in Mexico. The Florida appellate court approved the trial court's exercise of jurisdiction to determine the custodial position of the wife and child, even though neither the wife nor the child were before the court. The court acknowledged the absence of personal jurisdiction and a significant connection with the State of Florida, but nevertheless found that the final judgment was properly entered:

> While the court did not acquire personal jurisdiction over the wife, personal jurisdiction is not required to make an out-of-state parent a party to a custody action where the state court has subject matter jurisdiction under the UCCJA. *Balestrieri v. Maliska*, 622 So. 2d 561 (Fla. 4th DCA 1993). Indeed, the UCCJA contemplates that one party may not be amenable to service within the state, because it has explicit provisions for service of parties outside the state. § 61.1312, Fla. Stat. (1993).
>
> The trial court had subject matter jurisdiction to determine the issue of child custody, and the final judgment is affirmed in this respect.

Warfield v. Warfield, 661 So. 2d 924, 925-926 (Fla. 4th DCA 1995).

The wife thereafter sought further review by the Supreme Court of Florida, but that court denied discretionary review. *Warfield v. Warfield*, 669 So. 2d 252 (Fla. 1996).

REASONS FOR GRANTING THE WRIT

THE UNIFORM CHILD CUSTODY JURISDICTION ACT IS INCOMPATIBLE WITH TRADITIONAL NOTIONS OF DUE PROCESS WHERE IT IS USED TO EXERCISE JURISDICTION OVER AN ABSENT PARENT AND CHILD WHO ARE DOMICILED IN AND RESIDENTS OF A FOREIGN COUNTRY AND HAVE NEVER INVOKED OR AGREED TO THE EXERCISE OF JURISDICTION BY ANY COURT OF THE UNITED STATES.

The Constitution of the United States does not permit courts of one state to exercise jurisdiction over residents of foreign countries unless those residents have sufficient minimum contacts with the state. This Court has addressed on several occasions the due process requirements of the Fourteenth Amendment in determining whether maintenance of an action against a foreign individual offends "traditional notions of fair play and substantial justice." *Burger King v. Rudzewicz*, 471 U.S. 462, 474, 105 S. Ct. 2714 (1985); *International Shoe Co. v. Washington*, 325 U.S. 310, 316, 66 S. Ct. 154, 158 (1945). As a result of this Court's precedent, the law is uniformly settled that the long arm jurisdiction of the courts requires a purposeful nexus between the foreign individual and the court.

The application of the Uniform Child Custody Jurisdiction Act (UCCJA) as found by the courts in Florida

and in other states defies those traditional notions, acting instead to empower courts to exercise jurisdiction over absent parents and children whenever a court deems jurisdiction to be in the best interest of the child. That arbitrary application of the UCCJA is inconsistent with due process notions and only encourages a rush to the local courthouse and the disentitlement of a custodial parent who seeks to obtain a custody determination in a foreign jurisdiction.

The UCCJA has been enacted in substantially the same form in all 50 states, the Virgin Islands, and the District of Columbia.[4] *Balestrieri v. Maliska*, 622 So. 2d 561, 563 (Fla. 4th DCA 1993). In Florida, the UCCJA is codified at §§ 61.1302-61.1348, Florida Statutes (1995). The purpose of the UCCJA is explained in § 61.1304:

> **61.1304 Purposes of act; construction of provisions.** – The general purposes of this act are to:
>
> (1) Avoid jurisdictional competition and conflict with court of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.
>
> (2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in the state which can best decide the case in the interest of the child.

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[4] The Parental Kidnapping Prevention Act (PKPA) is the federal counterpart to the UCCJA. 28 U.S.C. § 1738A. The PKPA, which does not confer subject matter jurisdiction on federal courts to adjudicate custody claims, extends the Full Faith and Credit Clause to child custody determinations. *Thompson v. Thompson*, 484 U.S. 174, 108 S. Ct. 513 (1988).

(3) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his or her family have the closest connection and where significant evidence concerning his or her care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the family have a closer connection with another state.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(6) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(7) Facilitate the enforcement of custody decrees of other states.

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(9) Make uniform the law with respect to the subject of this act among states enacting it.

Jurisdiction to decide child custody disputes under the UCCJA is not intended to be extremely broad, but is instead designed to permit custody determinations by the court having the most substantial relation with the child. § 61.1304(3), Fla. Stat. (1995). The UCCJA is not a vehicle to enable a non-custodial parent to obtain jurisdiction

over an absent child and custodial parent by winning the race to the courthouse. *Gonzalez v. Gonzalez*, 654 So. 2d 257 (Fla. 3d DCA 1995) (significant connection required). To the contrary, courts are expected to decline the exercise of jurisdiction when it appears the child has a more fixed relationship with another jurisdiction or another court is better suited to determine the child's best interests. Thus, the UCCJA does not direct judges to consider provincial notions of judicial superiority when evaluating whether "[i]t is in the best interest of the child that a court of this state assume jurisdiction. . . . " § 61.1308(1)(b), Fla. Stat. (1995).

The jurisdictional provision of the UCCJA provides:

61.1308 Jurisdiction. –

(1) A court in this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) This state:

1. Is the home state of the child at the time of commencement of proceeding, or

2. Had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his or her removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(b) It is in the best interest of the child that a court of this state assume jurisdiction because:

1. The child and his or her parents, or the child and at least one contestant, have a significant connection with this state, and

2. There is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(c) The child is physically present in this state and:

1. The child has been abandoned, or

2. It is necessary in an emergency to protect the child because he or she has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or

(d)1. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (a), paragraph (b), or paragraph (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and

2. It is in the best interest of the child that a court of this state assume jurisdiction.

(2) Except under paragraph (c) or paragraph (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody.

While the jurisdictional provision of the UCCJA does not depend on the personal presence of both parents and the minor child in the state, it does envision that the relationship between the child and the state court exercising jurisdiction will be substantial. *McDougald v. Jenson*, 786 F.2d 1465 (11th Cir.), *cert. denied*, 479 U.S. 860, 107 S. Ct. 207 (1986) (significant connection required, as when child is in the forum state for most of the time). It is in that respect that the UCCJA incorporates the due process principles of jurisdiction. While this Court has not yet ruled that the same constitutional minimum contacts are necessary to secure jurisdiction in custody cases, *Shaffer v. Heitner*, 433 U.S. 186, 208, n. 30, 97 S. Ct. 2569, 2582, n. 30 (1977), the Court has extended the minimum contacts standard to *in rem*, *in personam*, and even child support cases. *Kulko v. Superior Court*, 436 U.S. 84, 98 S. Ct. 1690 (1978). It is appropriate for this Court to declare that the minimum contacts standard is the basic constitutional foundation for the exercise of jurisdiction in matters which require the participation of individuals in disputes initiated at the whim of another.

That this court must utilize this opportunity to clarify this jurisdictional issue is compelled by the varying, and inappropriately contrary, rulings of other courts. Fifteen states, including Florida, have rejected any minimum contacts requirement in situations involving the custody of children. *Balestrieri v. Maliska*, 622 So. 2d 561, 563, n. 1 (Fla. 4th DCA 1993) (The states of California, Florida, Kansas, Illinois, Indiana, Louisiana, Mississippi, New Jersey, North Carolina, Oregon, Rhode Island, Tennessee, Washington, West Virginia, and Wisconsin have concluded that minimum contacts principles of personal

jurisdiction do not apply to child custody cases.). Both Ohio and Wyoming have found that the minimum contacts standard controls. *Pasqualone v. Pasqualone*, 63 Ohio St. 2d 96, 17 Ohio Op. 3d 58, 406 N.E.2d 1121 (1980); *Marquiss v. Marquiss*, 837 P.2d 25 (Wyo. 1992). Georgia does not adhere to the minimum contacts rule, but requires in state service based on state law, which effectively makes the long arm requirements for personal service applicable to child custody cases.

With this wide variety of UCCJA jurisdictional decisions, the majority of which go against this bedrock principle of jurisdiction established fifty years ago in *International Shoe*, the stage is now set for a clear voice of resolution. Where state courts have offered different rulings on matters of national importance, this Court is the only remaining arbiter of consistency. Supreme Court Rule 10(b). In addition, where state courts have addressed important questions of federal law that have thus far eluded this Court, certiorari review is in order. Supreme Court Rule 10(c).

This case presents both situations, in a context where the ruling does not depend on any particular set of facts. Rather, the Florida court has ruled, as a matter of jurisdictional law, that one's connection to Florida is of virtually no moment when a court has been asked to rule on a child custody dispute. The Florida Fourth District construed the UCCJA as conferring jurisdiction in any situation in which the non-custodial parent initiates a child custody action in a Florida court based on a contract giving the non-custodial parent the right to assign the place of the child's residence. *Warfield*, 661 So. 2d at 925. The agreement between the parents in this case, which

was not entered into in connection with any court proceeding but was merely a private contract, purported to require that the child live with the father when the child reached school age. *Id.* at 924-925. In order to obtain judicial enforcement of this private contract, which had never before been approved by a court, the father initiated a divorce and child custody action in Florida, knowing full well that the wife (the custodial parent) and the child were domiciled residents of Mexico for the past five years. *Id.* The Florida courts, finding that the father's presence in Florida was sufficient to confer jurisdiction on Florida courts because it was in the best interest of the child, smacks of provincial superiority. It is as if the Mexican courts, where the child lived and in which an action was pending, were judicially inferior.

This jurisdictional reach in the absence of any meaningful or sustained contacts between the mother-child and the State of Florida, let alone the lack of any minimum contacts, flies in the face of due process limitations. Some tangible component of personal jurisdiction is required under our Constitution before a mother and minor child, both long established residents of a foreign country, can be haled into an American court simply because a non-custodial parent prefers to litigate with a home court advantage. In *Kulko v. Superior Court,* this Court recognized that personal jurisdiction is required before imposing a child support obligation on a parent. Even though *Kulko* did not involve a child custody jurisdiction issue, its rationale is certainly consistent with the traditional due process notion of minimum contacts.

One of the paramount purposes of the UCCJA is to have custody litigation occur in the state where the child

and the family have the "closest connection." § 61.1304(3), Fla. Stat. (1995). That is why both the UCCJA and the PKPA presume that custody litigation will occur in the child's "home state," not the state in which one parent happens to reside. § 61.1306(5), Fla. Stat. (1995); 28 U.S.C. § 1738A(c). That the child's home state is the sovereign nation of Mexico cannot alter this presumption for due process purposes, because the UCCJA expressly recognizes principles of international comity. § 61.1348, Fla. Stat. (1995); *Suarez Ortega v. Pujals de Suarez*, 465 So. 2d 607, 609 (Fla. 3d DCA 1985) ("There has been no showing that the Mexican court will not accord minimum due process when ruling on the issue of permanent child custody."). *See also Brown v. Tan*, 395 So. 2d 1249 (Fla. 3d DCA 1981) (Florida courts had no jurisdiction to determine child's custody where both the child and the custodial parent resided in a foreign country).

The UCCJA, to remain consistent with due process principles, must require traditional jurisdictional considerations when making child custody determinations. Those principles cannot be satisfied when a private contract which has never been presented to a court is sufficient to confer jurisdiction over a custodial parent and child residing internationally. Far from resolving jurisdictional disputes, the Florida interpretation of the UCCJA actually encourages divisive litigation, forum shopping, and races to the courthouse. Florida law itself could not confer jurisdiction under its long arm statute, so it is doubtful that the jurisdictional touchstones of the UCCJA could be satisfied. *See Evans v. Evans*, 668 F.Supp. 639 (M.D. Tenn. 1987); *Williams v. Goss*, 438 S.E.2d 670, 211

Ga. App. 195 (Ga. App. 1993) (state must have jurisdiction before it can modify custody decree).

The UCCJA jurisdictional provisions resemble the minimum contacts requirements approved by this Court in *International Shoe*. The Court has not yet applied those principles to child custody cases, notwithstanding that the welfare of our children is a national and international priority. Given the degree of attention which the courts and legislative bodies of this country have given to children, the question of when courts can decide child custody disputes is an extremely important one. To date, the states are hopelessly in conflict. The UCCJA, as construed and applied by Florida and other states, may well encourage more conflict instead of promoting resolutions, unless this Court announces which principle of jurisdiction applies to this national problem. The courts are in conflict. The federal question is important. The stakes are high. The children and parents of the world need this Court's guidance.

CONCLUSION

The decisions of Florida courts and the courts of other states threaten fundamental notions of due process. Child custody determinations must only be made when courts have constitutionally acceptable jurisdiction. Due process principles require that a parent and child have meaningful contacts with the forum state before jurisdiction is exercised. The constitutional validity of the Uniform Child Custody Jurisdiction Act depends upon the

existence of minimum contacts. Because this case presents a question of national importance with international repercussions, this Court should exercise its discretion to issue the writ of certiorari.

Respectfully submitted,

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669 So.2d 252 (Table)
(Cite as: 669 So.2d 252)

Tina Reid Holman Warfield
v.
Edward S. Warfield, III
No. 86,888
Supreme Court of Florida.
Feb. 12, 1996

Appeal From: 4th DCA, 661 So.2d 924
Disposition: Rev. den.

(The decision of the Supreme Court of Florida is referenced in the Southern Reporter in a table captioned 'Florida Decisions Without Published Opinions.')

661 So.2d 924
20 Fla. L. Weekly D2340
(Cite as: 661 So.2d 924)

Tina Reid Holman WARFIELD, Appellant,
v.
Edward S. WARFIELD, III, Appellee.
No. 94-2971.
District Court of Appeal of Florida,
Fourth District.
Oct. 18, 1995.

Husband filed petition for dissolution. The Circuit Court, Broward County, Robert C. Abel, Jr., J., entered default judgment in favor of husband that incorporated parties' prior separation agreement. Wife appealed. The District Court of Appeal, Warner, J., held that: (1) trial court had jurisdiction over child custody issues, but (2) trial court was without authority to restore wife's maiden name.

Affirmed in part, reversed in part.

David M. Shenkman of David M. Shenkman, P.A., Miami, for appellant.

Mary E. Scoville of Law Offices of Mary E. Scoville, Miami, for appellee.

WARNER, Judge.

In this appeal, the former wife contends that the trial court did not have jurisdiction to determine the issue of child custody. Because the wife agreed in the separation agreement to the husband acquiring primary custody of the minor child at the time the child entered school, we hold that the trial court had jurisdiction under the Uniform Child Custody Jurisdiction Act, section 61.1308(1)(b), Florida Statutes, and affirm as to all issues but one. We reverse the judgment only insofar as it restores to the wife her maiden name where no pleading

or paper signed by the wife requesting that relief was presented to the trial court.

The parties were married in New York in 1985. In 1989 a son was born to the couple, who then resided in Virginia. Both parties and their child are United States citizens. Just a year later the parties separated and executed a property settlement agreement covering all issues of the marriage and the custody of the parties' child. By its terms, the child was to reside initially with the wife in Cozumel, Mexico. The husband would have visitation with the child for two months each summer. The parties agreed that at the beginning of the school year in 1994, the child would commence residing with the husband and would attend school in the jurisdiction in which the husband then resided. The agreement also contained a provision consenting to the incorporation of its terms in any final judgment of divorce. It appears from the meager record that the parties complied with the agreement. The child resided with the wife in Mexico, and the husband exercised his visitation regularly. The husband moved to Florida sometime in 1992 or 1993, and the child visited with his father in Florida in December 1993.

On June 14, 1994, the husband filed a pro se petition for dissolution in the Broward County Circuit Court. The petition requested the incorporation of the parties' 1990 agreement in the final judgment and its enforcement. A proper affidavit under the UCCJA was filed, and the wife was served with a summons at her Cozumel, Mexico, address in August of 1994. On September 12, 1994, the Clerk of the Court entered a default against the wife for failure to answer the complaint. Two days later, a final hearing was held before the trial judge who entered a

final judgment incorporating the separation agreement. The wife was not present at the hearing.

Also in the court file was a document indicating that the wife had filed some sort of action in Mexico on September 1, 1994. All that is contained in the file is what appears to be a summons which was "served" on the husband at the wife's home in Cozumel. No other documents appear in the file indicating the status of the Mexican proceeding or proper service on the husband.

The wife attacks the trial court's jurisdiction to determine child custody issues because both she and the child are residents of Mexico. The wife relies on section 61.1308(1)(a), Florida Statutes, which provides that the court has jurisdiction if this state is the home state of the child. Claiming that Florida is not the home state of the child, the wife concludes that Florida cannot assert jurisdiction.

Of course, the wife ignores the second section of the statute which states that a court of this state can exercise jurisdiction if: It is in the best interest of the child that a court of this state assume jurisdiction because: 1. The child and his parents, or the child and at least one contestant, have a significant connection with this state, and 2. There is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships. § 61.1308(1)(b), Fla.Stat. (1993). We hold that the agreement on its face provides the significant connection with Florida. The parties agreed in writing that the child would reside with and attend school in the jurisdiction in which the husband resided at the commencement of the school year of

1994. Thus, because the husband lived in Florida, the child and the father had a significant connection with the state and there would be available in this state substantial evidence concerning the future care, protection, training and personal relationships. While the wife stresses the fact that the child is not a resident of the state, physical presence of the child in Florida is not a prerequisite to determine custody. § 61.1308(3), Fla.Stat. (1993).

That an action may have been filed regarding custody in Mexico after the institution of proceedings in Florida is of no moment to the acquisition of jurisdiction by the Florida court. Although the statute requires the recognition of custody decrees of legal institutions of other countries where reasonable notice and opportunity to be heard were given to all parties, section 61.1348, Florida Statutes, the husband had not been appropriately served with any action. But even if he had received notice, the trial court was not required under the provisions of the UCCJA to defer to a subsequent action in Mexico. A trial court is only required to defer to proceedings concerning custody of the child pending at the time of the institution of the Florida proceeding. § 61.1314(1), (3), Fla.Stat. (1993). Therefore, under the UCCJA the trial court did not have to defer to the Mexican proceeding.

While the court did not acquire personal jurisdiction over the wife, personal jurisdiction is not required to make an out-of-state parent a party to a custody action where the state court has subject matter jurisdiction under the UCCJA. Balestrieri v. Maliska, 622 So.2d 561 (Fla. 4th DCA 1993). Indeed, the UCCJA contemplates that one party may not be amenable to service within the

state, because it has explicit provisions for service of parties outside the state. § 61.1312, Fla.Stat. (1993).

The trial court had subject matter jurisdiction to determine the issue of child custody, and the final judgment is affirmed in this respect.

We sua sponte reverse that portion of the final judgment which restores the maiden name of the wife. While the husband requested that relief in his petition, and the wife defaulted, we hold that no one may request a name change for another person without that person's express consent. Furthermore, because the trial court did not have personal jurisdiction over the wife, it was without jurisdiction to entertain a change of her name.

Affirmed in part; reversed in part.

PARIENTE and SHAHOOD, JJ., concur.

PROPERTY SETTLEMENT AGREEMENT

THIS AGREEMENT, made this 7th day of September 1990, by and between EDWARD S. WARFIELD, III (hereinafter referred to as "Husband") and TINA REID HOLMAN WARFIELD (hereinafter referred to as "Wife").

WITNESSETH:

WHEREAS, the parties hereto were legally married on January 5, 1985, in New York City, New York; and

WHEREAS, in consequence of disputes and unhappy differences, the parties hereto have separated as Husband and Wife and are now and have been living separate and apart from each other continuously since on or about September 7, 1990, without expectation of resuming marital cohabitations; and

WHEREAS, one (1) child was born of the marriage of Husband and Wife, to wit: Nicholas Carver Warfield, born September 15, 1989 (hereinafter referred to as "Minor Child" or "Child"); and

WHEREAS, without waiving any ground for divorce whichever party hereto may now or hereafter have against the other, the parties deem it is their best interest to enter into this Agreement to formalize their voluntary separation, to settle their respective property rights, and all other matters growing out of their marital relationship;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, in full, complete, and final settlement, adjustment, and compromise of any and all interest whatsoever, of each in the property,

estate, or interests of the other, Husband and Wife agree with each other and their respective heirs, personal representatives, and assigns as follows:

I. SEPARATE LIVES:

Husband and Wife have mutually agreed to separate and voluntarily live separate and apart in separate places of abode without any cohabitation from September 7, 1990. Neither Husband nor Wife shall interfere with or molest the other, nor endeavor in any way to exercise any marital control or right over the other or to have any marital relations with the other, or to exert or demand any right to reside in the home of the other. Husband and Wife shall be free to go his or her own respective way as fully and to the same extent as if they had never been joined in matrimony. Husband and Wife shall have the full and exclusive right to occupy and reside in their respective residences, without interference of any kind from the other. Each shall refrain from entering upon the premises of the other at any time for whatsoever reason, and shall cause no other person to enter upon such premises, without the express permission of the other.

II. CUSTODY AND SUPPORT OF THE MINOR CHILD:

A. Husband and Wife agree that each shall have joint custody of the Minor Child born of the marriage; subject to reasonable rights of visitation by Husband or Wife, as the case may be, with the Child.

The Child shall initially reside with the Wife in Cozumel, Mexico. During each twelve (12) month period commencing September 1 and ending August 31 prior to

the Child's emancipation, the Child shall reside with the Husband for three (3) three-week periods. One such three (3) three-week period shall commence December 6 of each year and the remaining two (2) three-week periods shall be determined upon the mutual agreement of Husband and Wife, taking into consideration the Husband's work schedule and the best interests of the Child.

Wife shall pay one-half all travel expenses, including round trip air fare, to fly the Child to the Washington, D.C. area or other location as may be requested by the Husband, provided any additional expense for travel other than to the Washington, D.C. area shall be borne by the Husband.

The parties agree that in addition to the foregoing, Husband shall be entitled, at his expense, to visit with Child while the Child resides with the Wife, and to arrange for additional visits with the Child, at Husband's expense, at locations other than at the Wife's residence and within the United States; provided, however, that prior to exercising such visitation the Husband gives ten (10) days written notice to the Wife of such visitation.

Beginning with the school year 1994 or the date upon which the Child may attend kindergarten in the jurisdiction in which Husband resides, the Child will reside with the Husband and will attend school in the jurisdiction in which the Husband resides. During such period that the Child resides with the Husband, the Wife shall be entitled to visit with the Child during summer vacation following each school year.

In the event the Wife desires to visit the Child outside the Washington, D.C. area, she shall so notify the

Husband at least ten (10) days prior to such visitation and she shall further pay any and all travel costs, including ground transportation and air fare associated with such visitation.

The parties acknowledge that their paramount concern is the best interests of the Child and that the foregoing schedule of visitations are dependent on the continued health and welfare of the Child, and that such schedules may have to be modified to promote the best interests of the Child.

B. The parties hereto shall encourage such other visitation at such times, places and other means (such as but not limited to telephonics) so as to foster and encourage a normal parental relationship with the Child as practical under the circumstances then existing.

C. Husband shall pay to the Wife for support and maintenance of the Minor Child the sum $100 per month on the first day of each month beginning December 1, 1990, and until such Child becomes emancipated, as hereinafter defined.

D. For purposes of this Agreement, the Child shall be deemed to have become emancipated on the occurrence of any one of the following events: (1) attainment of the age of eighteen (18) years; (2) the valid marriage of such Child; or (3) the induction, enlistment, or entry upon active duty in the Armed Forces of the United States for a term of service of not less than one year.

E. The parties agree that the Wife shall be entitled to claim the Minor Child as her dependent for purposes of federal and state income tax returns. The parties

hereby agree to file a joint income tax return for Federal taxes and a joint income tax return for Virginia taxes for tax year 1990. Any tax liability or tax refund, as the case may be, together with all costs of the preparation of such returns shall be shared equally.

F. Both parties further agree to keep the other party notified as to the well being of the Child, and to consult on any major decisions affecting the Child, and to provide telephone numbers and access to encourage mutual communication with the Child.

III. DIVISION OF REAL PROPERTY:

The Husband and Wife own a certain parcel of improved real property known as 214 S. Henry Street, Alexandria, Virginia ("Residence"). Upon the full execution of this Agreement, Husband and Wife agree to execute the General Warranty Deed in the form as shown on the Attached Exhibit A, transferring all their right, title and interest in the Residence to the Husband, as and for his sole and separate equitable estate.

As consideration for such transfer, Husband agrees to execute the deed of trust promissory note in the form as shown on the attatched Exhibit B, to be secured by the deed of trust in the form as shown on the attached Exhibit C and encumbering the Residence.

The note shall be in the face amount of $50,000.00 and shall bear no interest. The note shall be due and payable within five (5) years from date of execution or upon the sale of the Residence, whichever first occurs. In the event of a sale of the Residence prior to the expiration of five (5) years from date of execution, then, in such

event, the amount due in full payment and satisfaction of the note shall be the sum of $50,000.00 or one half of net proceeds due the Husband arising out of such sale, whichever is less; it being the intent of the parties that the Wife receive, as full consideration for the transfer of her interest in the Residence, one half of the net proceeds of the Residence upon sale or the sum of $50,000.00 whichever is less.

For purposes of this Agreement, the term "net proceeds" shall be defined as gross proceeds of sale, less all reasonable costs of sale, including, but not limited to, broker's commission, loan fees or points, closing costs, including seller's attorney's fees, transfer taxes and Clerk's fees, and less payment of all existing encumbrances, including the liens evidenced by the existing deed of trust and any pro-ratable charges or expenses.

Wife agrees that she will authorize and direct all trustees named in the deed of trust to subordinate the lien of such deed of trust to any bona fide refinance or home improvement loan within five (5) days following a request to subordinate and receipt of an appraisal or other evidence that there remains a net equity in the Residence (before deducting the principal indebtedness secured by such deed of trust) equal to or greater than the principal indebtedness secured by such deed of trust.

Husband shall have sole use and occupancy of the Residence and Wife shall not go on or in said Residence without the express consent of the Husband. Husband shall pay the existing deed of trust encumbering the Residence according to its terms and shall indemnify and

hold Wife harmless from any liability under such existing deed of trust.

IV. WAIVER OF SPOUSAL SUPPORT:

The parties hereby waive and release any rights that they may have for support and maintenance, spousal support, or alimony for themselves, and any and all claims for equitable distribution pursuant to S.20-107.1 and S.20-107.3 of the Code of Virginia of 1950, as amended, as now in effect, or as may hereafter be enacted, and/or any other obligations, for support or otherwise, arising out of the marital relationship of the parties, including, but not limited to any interest either may have to the retirement benefits of the other of whatever nature they may be, now or in the future, but excepting all obligations contained in this Agreement. The parties agree that they will at no time hereafter seek or ask, in any manner, any monies of any nature from one another except as set forth in this Agreement; and further, that if proceedings in divorce are taken by either of the parties, they will not in such proceedings make such demands. Wife expressly waives any and all her right, title and interest to the Husband's business known as National Home Improvement Services, Inc., including any right, title and interest to its assets, name accounts receivable, funds on deposit, good will and any value attributed to the business whatsoever.

The parties agree and acknowledge that they have had full disclosure of their respective assets, and enter into this Agreement with full knowledge of each other's income, individually held assets, assets held by each party jointly with one or more other individuals, jointly

held marital assets, and all other assets and income from each. They agree that such assets and income have been fully taken into account in the preparation of this Agreement.

V. MEDICAL INSURANCE:

The Husband will obtain Hospitalization and Major Medical Insurance Coverage under which the Child is to be a named insured. The Husband will maintain said coverage or equivalent coverage in force for the Child until such time as the Child attains the age of 18 years, marries, dies or otherwise becomes emancipated. Any extraordinary medical expenses incurred for the Child which are not covered by insurance shall by paid by the Husband and Wife in equal proportions. Medical expenses shall be deemed to include dental, orthodontic and psychological or psychiatric expenses, and the parties shall cooperate in choosing such medical providers. The Husband shall maintain such insurance in full force and effect by paying all premiums, dues and assessments thereon, shall forward to the Wife, upon request, evidence of such medical insurance and forms to facilitate the rights under this paragraph, and shall sign any authorization or other appropriate form allowing the Wife to be reimbursed by the insurance carrier for any expenses incurred by the Wife on behalf of said Child.

VI. PERSONAL PROPERTY

The parties have divided, to their mutual satisfaction, all of their personal property as shown on the attached Exhibit D and said property shall remain the permanent property of the persons presently in possession of same.

VII. DEBTS OF THE PARTIES:

Husband agrees to assume and pay the following debts incurred by the parties during their marriage:

(1) Deed of Trust Note of $187,600.00;

(2) Deed of Trust Note of $47,000.00.

Wife agrees to assume and pay the following debts incurred by the parties during their marriage:

(1) None.

Each party indemnifies the other from any and all loss or damage incurred due to a failure by such party to promptly pay such obligations.

VIII. SUBSEQUENT DEBTS AND PLEDGE OF CREDIT:

Each party agrees to indemnify the other from any debts, obligations or liabilities of such party incurred subsequent to September 7, 1990, and each party agrees to hold the other harmless from and against any and all such claims and demands which may accrue or otherwise be asserted against the other. Each party covenants and agrees that he or she will not incur any debts, obligations or liabilities on the other party's credit or do anything for which the other party could legally be liable. Each party shall, immediately following the execution of this Agreement, cancel all charge accounts of whatsoever nature for which the other party could be obligated, and each agrees that he or she will be [sic] the future establish charge accounts and credit in his or her sole name only.

IX. CLAIMS:

Each party relieves each other entirely from all personal claims and demands and from any and all claims that may hereafter attach, arising in any manner from the relations of Husband and Wife; and after this settlement the Husband and Wife shall require nothing whatsoever of the other, except as herein provided, as though the marriage relation between them had never existed.

X. WAIVER OF ESTATE CLAIM:

Except as otherwise provided herein, each party hereby releases and forever discharges the other, his or her heirs, executors, administrators, assigns, property and estate from any and all rights, claims, demands or obligations arising out of or by virtue of the marital relation of the parties including dower rights, curtesy, homestead rights, right of election regarding the estate of the other, or to take against the Will of the other, right of inheritance or distribution in the event of intestacy, right to act as executor or administrator of the estate of the other, and all other similar or related rights under the laws of any state or territory of the United States or of any foreign country, as such laws exist or may hereafter be enacted or amended. Nothing herein, however, shall constitute waiver of either party to take a voluntary bequest or bequests under the Will of the other.

XI. MUTUAL RELEASES:

Each party hereby waives, releases and discharges the other from any and all causes of action, claims or demands whatsoever, in law or in equity, which he or she may or might have or claim to have against the other by

reason of any matter, cause, or thing whatsoever, except marital actions and claims founded upon the provisions of this Agreement or on claims which have been reserved herein.

XII. GROUNDS FOR DIVORCE:

That it is understood and agreed that any cause existing justifying divorce shall not be abrogated by the terms of this Agreement, but that any action for divorce between the parties hereto shall be subject to and governed by the terms of this Agreement, and the terms and conditions set forth in this agreement shall be incorporated in any decree of divorce which may be entered in any action between the parties hereto.

XIII. INCORPORATION OF AGREEMENT:

It is the desire and intent of the parties that this Agreement and all its terms and provisions shall be affirmed, and ratified by the Court and incorporated in and made a part of any decree or order whether for temporary, interlocutory or final relief which may be entered by any Court of competent jurisdiction to which either of the parties hereto may resort for purposes of divorce, spousal support or property. The parties hereto agree that they will present this Agreement to the Court and request that it be ratified, affirmed and incorporated in and made an enforceable part of any decree or order entered therein, but not merged therein, and the parties hereto further agree that neither of them will oppose such ratification, affirmation and incorporation. Thereafter, this Agreement shall be deemed for all purposes to be a part of such decree or order and shall be enforceable in the same manner as any provision of such decree or order

pursuant to S.20-109.1 of the 1950 Code of Virginia, as amended, but shall not be deemed merged therein.

XIV. PAYMENT OF COUNSEL FEES:

Each party shall be responsible for payment of his or her own counsel fees incurred in the preparation of this Agreement. Each party shall pay his or her own counsel fees, court costs and other costs in connection with any action for divorce which may be brought by either party in the future.

XV. MULTIPLE ORIGINALS:

This Agreement may be executed in any number of counterparts, any one of which may be deemed the original.

XVI. MODIFICATION OR WAIVER OF TERMS OF AGREEMENT:

No modification or waiver of any of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement. No waiver of a breach or default of any clause of this Agreement shall be deemed to constitute a waiver of any subsequent breach or default of the terms hereof. The failure of any party at any time to insist upon the strict performance of any of the terms and covenants of this Agreement shall not be deemed a waiver of the right to insist upon strict performance of the same or any other terms or covenant of this Agreement at any time.

XVII. ADDITIONAL INSTRUMENTS:

Each party shall, at the other party's request and expense, at any time and from time to time hereafter take

any and all steps and execute, acknowledge and deliver any and all further instruments, documents, listing agreements, certificates of title, deeds, federal, local, and state tax returns and assurances and all papers as may be necessary that the other party may reasonably require for the purpose of carrying out the provisions of this Agreement.

XVIII. SEVERABILITY OF PROVISIONS:

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, the remainder of this Agreement nevertheless shall remain in full force and effect.

XIX. BINDING EFFECT:

The parties hereby covenant and agree that all stipulations, promises, agreements and provisions of this Agreement shall apply to, bind and be obligatory upon the parties hereto, their heirs, executors, administrators, personal representatives, transferees, trustees, successors and assigns, or any of them, whether so expressed or not.

XX. ENTIRE AGREEMENT:

The parties have incorporated in this Agreement their entire understanding. No oral statements or prior written matter extrinsic to this Agreement shall have any force or effect. The parties are not relying upon any representations other than those expressly set forth herein.

XXI. COSTS OF ENFORCEMENT:

The parties agree that any cost, including but not limited to counsel fees, court costs, investigation fees and

travel expenses, incurred by a party in the successful enforcement of any of the agreements, covenants, or provisions of this Agreement, whether through litigation or other action necessary to compel compliance herewith shall be borne by defaulting party. Any such costs incurred by a party in the successful defense to any action for enforcement of any of the agreements, covenants or provisions of this Agreement shall be borne by the party seeking to enforce compliance.

XXII. PRIOR AGREEMENT INVALIDATED:

The parties, in consideration of the covenants herein contained, hereby cancel, annul and invalidate any and all prior property settlement agreements made by them.

XXIII. ADVICE OF COUNSEL:

Each party hereto represents that he or she has had independent advice by counsel of his or her own choosing to the extent deemed necessary by said party; that each fully understands the facts and has been fully informed of all legal rights and liabilities; that after such advice and knowledge, each believes this Agreement to be fair, just and reasonable and that each signs this Agreement freely and voluntarily.

XXIV. EFFECTIVE DATE:

This Agreement shall be effective immediately.

XXV. NOTICE:

All notices, demands, or other communications that may be necessary or proper shall be deemed duly given if personally delivered, or when deposited in the United States mail, postage prepaid, first class, registered or

certified, return receipt requested, addressed respectively as follows:

If to Husband:	Edward S. Warfield, III 214 South Henry Street Alexandria, Virginia 22314
If to Wife:	Tina R.H. Warfield 55 East 2d Avenue #5A-B New York, NY 100228
With a copy to Wife's Counsel:	Anthony M. Benjamin, Esquire 532 Madison Avenue New York, NY 10022

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.:94-10745-35

IN RE: THE MARRIAGE OF
EDWARD S. WARFIELD, III,

Petitioner/Husband,

vs.

TINA REID HOLMAN WARFIELD,

Respondent/Wife

FINAL JUDGMENT OF
DISSOLUTION OF MARRIAGE

THIS CAUSE having come on before the Honorable Robert C. Abel, Jr. on Wednesday, September 14, 1994, upon the Petition for Dissolution of Marriage filed by the Petitioner/Husband, and counsel for the Petitioner/Husband having been present, and the Petitioner/Husband having presented live testimony and arguments to the Court, and the Court being otherwise fully advised on the premises, finds as follows:

A) That this Court has jurisdiction over the subject matter and the parties hereto.

B) That the marriage of the parties is irretrievably broken.

C) That the Respondent/Wife was served on August 19, 1994, at her residence, #380 de la Av. 55, Norte entre calles 6y8, Norte Ciudad, Cozumel QR00 Mexico 77600, and having failed to file responsive pleadings, a

Default was entered by the Clerk of the Court on September 12, 1994.

D) That the Court has been apprised of the proceedings instituted by the Respondent/Wife in Mexico, however, this Court finds that the Mexico Court does not have jurisdiction over the subject matter nor the parties. That any orders or judgments by the Mexico Courts would be void.

Accordingly, it is,

ORDERED AND ADJUDGED:

1) That this Court has jurisdiction over the subject matter and the parties hereto.

2) That the marriage heretofore existing between the parties be and it is hereby dissolved, a *vinculo matrimonii*.

3) That the Settlement Agreement entered into by the parties and dated on September 7, 1990, introduced into evidence and marked as Respondent's Exhibit "A", was executed voluntarily after full financial disclosure and the Honorable Robert C. Abel, Jr. finds that the Settlement Agreement to be fair and reasonable and incorporates it into the Final Judgment of Dissolution of Marriage and the parties are ordered to comply with it.

4) That the Respondent/Wife shall be restored to her former name of TINA REID HOLMAN.

5) That this Court retains jurisdiction of this cause and the parties hereto for the purpose of enforcing this Final Judgment as well as any matters pertinent to the parties and the subject matter.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida; this ___ day of September, 1994.

_____
CIRCUIT COURT JUDGE

Copies furnished:
Marina Garcia Wood, Esq.
Attorney for Respondent

Tina Reid Holman
Respondent/Wife
#380 de la Av. 55
Norte entre calles 6y8
Norte Ciudad
Cozumel QR00 Mexico 77600

UNIFORM CHILD CUSTODY JURISDICTION ACT

61.1302. Short title

Sections 61.1302-61.1348 may be known and shall be cited as the "Uniform Child Custody Jurisdiction Act."

61.1304. Purposes of act; construction of provisions.

The general purposes of this act are to:

(1) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being.

(2) Promote cooperation with the courts of other states to the end that a custody decree is rendered in the state which can best decide the case in the interest of the child.

(3) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his or her family have the closest connection and where significant evidence concerning his or her care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the family have a closer connection with another state.

(4) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child.

(5) Deter abductions and other unilateral removals of children undertaken to obtain custody awards.

(6) Avoid relitigation of custody decisions of other states in this state insofar as feasible.

(7) Facilitate the enforcement of custody decrees of other states.

(8) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child.

(9) Make uniform the law with respect to the subject of this act among states enacting it.

61.1306. Definitions.

As used in this act:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage or separation, and includes child neglect and dependency proceedings.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order

made in a custody proceeding, and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his or her parents, a parent, or a person acting as parent for at least 6 consecutive months or, in the case of a child less than 6 months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States; the Commonwealth of Puerto Rico; or the District of Columbia.

61.1308. Jurisdiction

(1) A court of this state which is competent to decide child custody matters has jurisdiction to make a

child custody determination by initial or modification decree if:

(a) This state:

1. Is the home state of the child at the time of commencement of the proceeding, or

2. Had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his or her removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(b) It is in the best interest of the child that a court of this state assume jurisdiction because:

1. The child and his or her parents, or the child and at least one contestant, have a significant connection with this state, and

2. There is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(c) The child is physically present in this state and:

1. The child has been abandoned, or

2. It is necessary in an emergency to protect the child because he or she has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or

(d)1. It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (a), paragraph (b), or paragraph (c), or

another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and

2. It is in the best interest of the child that a court of this state assume jurisdiction.

(2) Except under paragraph (c) or paragraph (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody.

61.131. Notice and opportunity to be heard.

Before a decree is made under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to s. 61.1312.

61.1312. Notice to persons outside this state; submission to jurisdiction.

(1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(a) By personal delivery outside this state in the manner prescribed for service of process within this state;

(b) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) By any form of mail addressed to the person to be served and requesting a receipt; or

(d) As directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, delivered, or last published at least 20 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

61.1314. Simultaneous proceedings in other states.

(1) A court of this state shall not exercise its jurisdiction under this act if, at the time the petition is filed, a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction

substantially in conformity with this act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under s. 61.132 and shall consult the child custody registry established under s. 61.1334 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending, to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with ss. 61.134-61.1346. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

61.1316. Inconvenient forum.

(1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) If another state is or recently was the child's home state;

(b) If another state has a closer connection with the child and his or her family or with the child and one or more of the contestants;

(c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) If the parties have agreed on another forum which is no less appropriate; and

(e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in s. 61.1304.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court, with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his or her consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for dissolution of marriage or another proceeding while retaining jurisdiction over the dissolution of marriage or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section, the court shall inform the court found to be the more appropriate forum of this fact or, if the court

which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

61.1318. Jurisdiction declined by reason of conduct.

(1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases, a court dismissing a petition under this section may charge the petitioner with

necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

61.132. Information under oath to be submitted to the court.

(1) Every party in a custody proceeding, in his or her first pleading or in an affidavit attached to that pleading, shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(a) The party has participated as a party or witness or in any other capacity in any other litigation concerning the custody of the same child in this or any other state;

(b) The party has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) The party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he or she obtained information during this proceeding.

61.1322. Additional parties.

If the court learns from information furnished by the parties pursuant to s. 61.132 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his or her joinder as a party. If the person joined as a party is outside this state, he or she shall be served with process or otherwise notified in accordance with s. 61.1312.

61.1324. Appearance of parties and the child.

(1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he or she appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under s. 61.1312 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

61.1326. Binding force and res judicata effect of custody decree.

A custody decree rendered by a court of this state which has jurisdiction under s. 61.1308 binds all parties who have been served in this state or notified in accordance with s. 61.1312 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties, the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act.

61.1328. Recognition of out-of-state custody decrees.

The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act, or which decree was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

61.133. Modification of custody decree of another state.

(1) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless:

(a) It appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree; and

(b) The court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and s. 61.1318 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with s. 61.1346.

61.1332. Filing and enforcement of custody decree of another state.

(1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the decree in the same manner as a custody decree of a circuit court of this state. A custody decree so filed has the same effect and shall be enforced in like manner.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and

other expenses, including attorneys' fees, incurred by the party entitled to the custody of his or her witnesses.

61.1334. Registry of out-of-state custody decrees and proceedings.

The clerk of each circuit court shall maintain a registry in which he or she shall enter the following:

(1) Certified copies of custody decrees of other states received for filing.

(2) Communications as to the pendency of custody proceedings in other states.

(3) Communications concerning a finding of inconvenient forum by a court of another state.

(4) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

61.1336. Certified copies of custody decree.

The clerk of the circuit court, at the request of the court of another state or at the request of any person who is affected by, or has a legitimate interest in, a custody decree, shall certify and forward a copy of the decree to that court or person.

61.1338. Taking testimony in another state.

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem

or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which, and the terms upon which, the testimony shall be taken.

61.134. Hearings and studies in another state; orders to appear.

(1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearances are desired will be assessed against another party or will otherwise be paid.

61.1342. Assistance to courts of other states.

(1) Upon request of the court of another state, the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his or her testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state, a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

61.1344. Preservation of documents for use in other states.

In any custody proceeding in this state, the court shall preserve the pleadings, orders, and decrees; any record that has been made of its hearings; social studies; and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of

another state, the court shall forward to the other court certified copies of any or all of such documents.

61.1346. Request for court records of another state.

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state, upon taking jurisdiction of the case, shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in s. 61.1344.

61.1348. International application.

The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees, and decrees involving legal institutions similar in nature to custody institutions, rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

PARENTAL KIDNAPPING PROTECTION ACT

28 U.S.C. 1738A. Full faith and credit given to child custody determinations.

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term –

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody determination which modifies, replaces, supersedes, or

otherwise is made subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child; and

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if –

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the

child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if –

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.